



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0005]

Clawfoot Supply, LLC

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the Federal Register any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Clawfoot Supply, LLC containing a civil penalty in the amount of six million (\$6,000,000), subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (5-0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Clawfoot Supply, LLC. Commissioner Feldman issued a statement with his vote which can be found here: <https://www.CPSC.gov>.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by [INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22-C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Madeleine Mietus, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; mmieuts@cpsc.gov.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 15, 2022.

Alberta E. Mills,

Secretary.

CPSC Docket No.: 22-C0005

1. In accordance with the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051–2089, and 16 C.F.R. § 1118.20, Clawfoot Supply, LLC (“Clawfoot Supply”) and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Clawfoot Supply is a wholly owned subsidiary of Ferguson Enterprises, LLC (“Ferguson Enterprises”) and is organized and existing under the laws of the state of Kentucky, with its principal place of business in Erlanger, Kentucky.

4. Between 2011 and 2018, Clawfoot Supply imported, distributed, and offered for sale approximately 7,200 Wall-Mounted Teak Folding Shower Seats (“Shower Seats” or “Subject Products”).

5. The Shower Seats are “consumer products” that were “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15

U.S.C. § 2052(a)(5), (8). Clawfoot Supply is a “manufacturer” and “distributor” of the Subject Products, as such terms are defined in sections 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7), (11).

Violation of CPSA Section 19(a)(4)

6. The Shower Seats contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the aluminum hardware supporting the Shower Seat can corrode and break, posing fall and laceration hazards.

7. Between 2011 and 2018, Clawfoot Supply received multiple reports of corrosion and breakage with the Shower Seats, including reports of consumers who were injured when they were sitting on the Shower Seat when it failed.

8. During 2015, Clawfoot Supply initiated a design change to strengthen the support rods of the Shower Seats. In late 2015 through early 2016, Clawfoot Supply contacted consumers to advise them of the potential defect and corrosion problem occurring with the Shower Seats.

9. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Clawfoot Supply did not immediately report to the Commission.

10. After the acquisition of Clawfoot Supply by Ferguson Enterprises, Clawfoot Supply’s compliance program was enhanced in Spring 2018. It was at this time that Ferguson Enterprises learned of the corrosion issue.

11. In July 2018, Clawfoot Supply filed an Initial Report with the Commission and filed a Full Report in August 2018 under 15 U.S.C. § 2064(b) concerning the Shower Seats.

12. Clawfoot Supply and the Commission jointly announced a recall of the Shower Seats on December 4, 2018. The press release announcing the recall stated that the aluminum hardware supporting the Shower Seats can corrode, posing fall and laceration hazards. The

release noted that 194 incidents of the seat breaking, including 37 incidents of falls without injury and 23 injuries had been reported.

Failure to Timely Report

13. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Clawfoot Supply did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Because the information in Clawfoot Supply's possession about the Subject Products constituted actual and presumed knowledge, Clawfoot Supply knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Clawfoot Supply is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

Compliance Program and Internal Controls Reports

16. Failure to make timely and accurate reports pursuant to CPSA section 16(b), as required by paragraph 27 of this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA.

RESPONSE OF CLAWFOOT SUPPLY

17. This Agreement does not constitute an admission by Clawfoot Supply of the staff's charges set forth in paragraphs 4 through 16 above, including without limitation that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, that Clawfoot Supply failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b), and that Clawfoot Supply knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C.

§ 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

18. Clawfoot Supply enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation. Clawfoot Supply does not admit that it violated the CPSA or any other law, and Clawfoot Supply’s willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Clawfoot Supply of liability or violation of any law.

AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Clawfoot Supply.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Clawfoot Supply or a determination by the Commission that Clawfoot Supply violated the CPSA’s reporting requirements.

21. In settlement of staff’s charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Clawfoot Supply shall pay a civil penalty in the amount of six million dollars (\$6,000,000) within thirty (30) calendar days after receiving service of the Commission’s final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Clawfoot Supply under this Agreement. Failure to make such payment by the date specified in the Commission’s final Order shall constitute Default.

22. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Clawfoot Supply to the United States, and interest shall accrue and be paid by Clawfoot Supply at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter

“Default Payment Amount” and “Default Interest Balance”). Clawfoot Supply shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Clawfoot Supply agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Clawfoot Supply shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney’s fees and expenses.

23. After staff receives this Agreement executed on behalf of Clawfoot Supply, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

24. This Agreement is conditioned upon, and subject to, the Commission’s final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission’s final acceptance of this Agreement and service of the accepted Agreement upon Clawfoot Supply, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

25. Effective upon the later of: (i) the Commission’s final acceptance of the Agreement and service of the accepted Agreement upon Clawfoot Supply and (ii) the date of issuance of the final Order, for good and valuable consideration, Clawfoot Supply hereby

expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether Clawfoot Supply failed to comply with the CPSA and the underlying regulations;
- (iv) a statement of findings of fact and conclusions of law; and
- (v) any claims under the Equal Access to Justice Act.

26. Clawfoot Supply shall maintain a compliance program and a system of internal controls and procedures designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Clawfoot Supply, and which shall contain the following elements:

- (i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- (iii) procedures requiring that information required to be disclosed by Clawfoot Supply to the Commission is recorded, processed and reported in accordance with applicable law;
- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law;
- (v) procedures requiring that immediate disclosure is made to Clawfoot Supply's senior management of any significant deficiencies or material weaknesses in the

design or operation of such compliance program or internal controls that affect adversely, in any material respect, Clawfoot Supply's ability to record, process and report to the Commission in accordance with applicable law;

- (vi) mechanisms to effectively communicate to all applicable Clawfoot Supply's employees through training programs or other means, compliance related company policies and procedures to prevent violations of the CPSA;
- (vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (viii) Clawfoot Supply's senior management responsibility for CPSA compliance; and
- (ix) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

27. The Firm shall submit a report sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions the Firm has taken to comply with each subparagraph of paragraph 26,
- (ii) affirming that during the reporting period the Firm has reviewed its compliance program and internal controls including the actions referenced in subparagraph (i) of this paragraph for effectiveness, and that it complies with each subparagraph of paragraph 26 or describing in detail any non-compliance with any such subparagraph, and
- (iii) identifying any changes or modifications made during the reporting period to the Firm's compliance program or internal controls to ensure compliance with the terms of the CPSA and in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of 3 years beginning 12 months after the

Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter.

28. Notwithstanding and in addition to the above, upon request of staff, Clawfoot Supply shall promptly provide to CPSC written documentation identifying any material changes or improvements to the Firm's compliance program or internal controls and the effective date of those changes or improvements. Clawfoot Supply shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and any personnel deemed necessary by staff, to evaluate Clawfoot Supply's compliance with the terms of the Agreement.

29. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

30. Clawfoot Supply represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Clawfoot Supply, enforceable against Clawfoot Supply in accordance with its terms. The individuals signing the Agreement on behalf of Clawfoot Supply represent and warrant that they are duly authorized by Clawfoot Supply to execute the Agreement.

31. The signatories represent that they are authorized to execute this Agreement.

32. The Agreement is governed by the laws of the United States.

33. The Agreement and the Order shall apply to, and be binding upon, Clawfoot Supply and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Clawfoot Supply, and each of its successors, transferees, and assigns, to appropriate legal action.

34. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

35. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

36. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

37. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Clawfoot Supply agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

CLAWFOOT SUPPLY, LLC

Dated: 8/16/2022

By: /s/
Keith Hammond
Clawfoot Supply, LLC
President

Dated: 8/15/2022

By: /s/
Jennifer Karmonick
Counsel to Clawfoot Supply, LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Dated: 8/16/2022

By: /s/

Madeleine Mietus

Trial Attorney

Office of Compliance and Field Operations

